

(2020) 02 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 167 Of 2020

Md. Meraj @ Mohammad Meraj

APPELLANT

Vs

State Of Bihar Through Principal Secretary And Ors

RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Bihar Prohibition And Excise Act, 2016 — Section 30(a)

Bihar Prohibition And Excise (Amendment) Act, 2018 — Section 56, 58(1), 62

Citation : (2020) 02 PAT CK 0021

Hon'ble Judges : Dinesh Kumar Singh, J; Anil Kumar Sinha, J

Bench : Division Bench

Advocate : Anis Akhtar, Kumar Manish

Final Decision : Disposed Of

Judgement

Heard Mr. Md. Anis Akhtar, learned counsel for the petitioner and Mr. Kumar Manish, learned SC -5.

Learned counsel for the petitioner is permitted to make correction in paragraph no. 1 of the writ petition.

The present writ application has been filed for release of Hero Splendor Plus (Black) colour motorcycle bearing registration no. BR22AE-6221, which

has been seized in connection with Bettiah Town P.S. Case No. 648 of 2019, registered for the offence punishable under Section 30(a) of the Bihar

Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

The relief as prayed for in paragraph - 1 of the writ petition, reads as follows:-

â??[I] For issuance of an appropriate writ in the nature of mandamus directing the respondents to release the Hero Splendor Plus (Black)

Motorcycle of the petitioner bearing Registration No- BR22AE-6221, Engine No-

HA10AGJHC56916, Chassis No- MBLHAR075JHC49059

which was seized in connection with Bettiah Town P.S. Case No.- 648 / 2019 dated 01-09-2016 registered under Section 30(a) of the

Bihar Prohibition and Excise Act, 2019.

[II] For issuance of any other relief / reliefs which may be deemed fit and proper by this Honâ??ble Court.

The prosecution case as per the written report of Ramprit Paswan, Sub Inspector of Police, Bettiah Town P.S. submitted to the Station House

Officer, Bettiah Town P.S. is to the effect that on 01.09.2019 during the course of patrolling, one Splendor Plus motorcycle, bearing registration no.

BR22AE6221 was intercepted and from a bag carried by the motorcyclist, 09 liters of country made liquor was recovered, leading to registration of

the Bettiah Town P.S. Case No. 648 of 2019 on 01.09.2019.

Learned counsel for the petitioner submits that petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle

in question has been brought on record, as Annexure 1 to the writ petition. He further submits that the vehicle in question is rotting under the open

sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money and petitioner is

ready to produce the vehicle in question after release of the same as and when directed by the concerned court or the confiscation authority and

petitioner shall not change the shape of the vehicle in question or transfer the same creating any kind of adverse interest against the interest of the

State during the pendency of the confiscation proceeding.

The counter affidavit filed on behalf of respondent no. 2 on 04.02.2020 suggests that the matter was heard on 13.01.2020 and on the prayer of learned

AC to SC -5, the matter was directed to be listed on 27th January 2020 thereafter, the confiscation proceeding has been initiated without verifying the

fact that the petitioner is the owner of the vehicle in question and till date, no notice with regard to the confiscation proceeding has been issued to the

petitioner. Moreover, the recommendation has been made for initiating confiscation proceeding by the Superintendent of Police, West Champaran,

Bettiah which is contrary to the provisions under Section 58 (1) of the Act which mandates that the recommendation / report shall be transmitted by

the seizing or detaining authority to the District Collector, having jurisdiction over

the said area.

Mr. Kumar Manish, learned SC - 5 relying upon the counter affidavit filed on behalf of respondent no. 2 i.e. District Magistrate, West Champaran,

Bettiah submits that the recommendation for confiscation under Section 58(1) of the Act was made by Superintendent of Police, West Champaran,

Bettiah vide letter no. 124 dated 18.01.2020 to the District Magistrate, West Champaran, Bettiah and consequently the confiscation proceeding being

Confiscation Case No. C.R.M. 757 of 2019-20 has been initiated vide order dated 31.01.2020, and notices have only been issued to the F.I.R. named

accused person, Sanjay Ram. Since the petitioner was not named in the F.I.R. hence, the District Transport Officer, West Champaran, Bettiah has

been directed to submit report with regard to the owner of the vehicle in question.

Considering the fact that sealing, detention or seizure is the sine qua non for valid initiation of a confiscation proceeding, as incorporated under

Sections 62, 56 and 58(1) of the Act. The confiscation has been initiated with regard to the motorcycle of the petitioner and the respondent has not

disputed the claim of the petitioner, being the owner of the vehicle in question. It is surprising that the Superintendent of Police, West Champaran,

Bettiah has made the recommendation for initiating confiscation proceeding, vide Annexure â?" A to the counter affidavit wherein he has only

transmitted the proposal for confiscating the motorcycle without mentioning the owner of the vehicle in question. This suggests that the F.I.R. was

registered on 01.09.2019 and thereafter about four months, the report has been transmitted under Section 58(1) of the Act by the Superintendent of

Police, Bettiah but he did not bother to verify as to who is owner of the vehicle in question which suggests the callous manner in which, the

investigating agencies are investigating the cases under the Excise Act, being such a stringent Act. The Collector, West Champaran, Bettiah has

initiated the confiscation proceeding vide order dated 31.01.2020 vide Annexure - B to the counter affidavit little realizing that he is going to confiscate

the property where he has no knowledge of as to who is the owner of such property. Hence, it appears that entire exercise has been done in a hurry

to frustrate the present writ application. The Collector, West Champaran, Bettiah has also not bothered to see that Section 58(1) of the Act mandates

that recommendation / report has been transmitted by seizing or detaining authorities whereas in the present case, the Superintendent of Police, West Champaran, Bettiah has transmitted it.

In the circumstances prima facie it appears that the confiscation proceeding virtually has not commenced against the petitioner who is owner of the motorcycle in question as a result of which we are constrained to direct for the release of the vehicle to the satisfaction of the learned Collector, West

Champaran on the following conditions:-

(I) The petitioner will produce the proof of valid certificate of registration/ ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs. 50,000/- but not in the form of bank guarantee or cash, with two sureties of the like

amount to the satisfaction of the A.D.J. II-cum-Special Judge, Excise, West Champaran, Bettiah or the Collector, West Champaran, Bettiah,

as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same

creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before

the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in

question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and

the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so

prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case

may be.

It is expected from the learned District Magistrate, West Champaran at Bettiah to conduct the proceedings, particularly, considering the lapses on the

part of authorities, which we have discussed in the present case and to conclude the proceedings within six weeks from the date of receipt /

production of a copy of this order. The exercise of release of the vehicle in question shall be done within a period of ten days of receipt / production of

a copy of this order.

The writ petition is disposed of.